IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2697 OF 1996

Shri.Ananda Mahadeo Mali]
resident of Erandoli,]
Tal. Miraj, Dist.Sangli]..Petitioner

Vs.

1. Shri.Shankar Appa Mali]
r/o Erandoli, Tal.Miraj]
Dist. Sangli]
]
2. State of Maharashtra]..Respondents

Mr.R.S.Apte, Advocate for petitioner
Mr.V.B.Rajure Advocate for respondent 1.
Ms.P.S.Cardozo AGP for respondent 2.

CORAM: SMT.RANJANA DESAI &
SMT.V.K.TAHILRAMANI,JJ.

DATE : SEPTEMBER 15, 2006

ORAL JUDGMENT [PER SMT.RANJANA DESAI,J.]:

1. The case of the petitioner is that in the year 1964, there was a partition between the petitioner and respondent 1 and survey no.99/1 situate at village Erandoli, Taluka Miraj, Dist.Sangli admeasuring 6 acres and 14 gunthas plus 6 gunthas

pot-kharab came to the share of the petitioner. Accordingly, an application came to be made for mutation in the record of rights on 20th November, 1964 and on 14th May, 1986, mutation entry No.4947 was effected. Admittedly, on 19th February, 1968 consolidation scheme was made applicable to the said area under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ("the said Act" for short). The scheme was gazetted on 19th March, 1968. It is the case of the petitioner that in the said scheme, he was shown as having been allotted 5 acres 35 gunthas. According to the petitioner, 19 gunthas plus 6 gunthas pot-kharab was shown less in his holding. The petitioner, therefore, applied under Section 31A of the said Act for variation of the scheme stating that there was a clerical and arithmetical mistake and the same may be corrected. The Assistant Consolidation Officer came to a conclusion that there was a mistake. On 28th May, 1984 he corrected the said mistake by order of the same date.

2. Being aggrieved by the said order, the respondent preferred an appeal before the Settlement Commissioner. The Settlement Commissioner by his

order dated 9th March, 1994 set aside the order passed by the Assistant Consolidation Officer. Being aggrieved by this judgment and order, the petitioner approached the Additional Chief Secretary by way of revision under Section 35 of the said Act. By the impugned order, the Additional Chief Secretary dismissed the said revision and hence, this writ petition.

3. We have heard Mr.Apte, the learned counsel for the petitioner. Mr.Apte urged that the Settlement Commissioner as well as the Additional Chief Secretary erred in setting aside the order of the Assistant Consolidation Officer. He submitted that in a family partition, 6 acres 14 gunthas plus 6 gunthas land was allotted to the petitioner. By the scheme framed under the said Act, the petitioner could not have been divested of his title to the said land. Therefore, record showing such incorrect allotment had to be corrected. Mr.Apte submitted that there is infact a mistake and therefore, it requires to be corrected. Mr.Apte prayed that this Court may quash the impugned orders and restore the Consolidation Officer’s order dated 28th May, 1984.

4. The learned counsel for respondent 1 on the other hand, contended that the petitioner has approached the authorities after a lapse of about 13 years. The application filed by the petitioner was barred by limitation. He further submitted that the correct remedy for the petitioner is to file a suit and infact, he has filed a suit and therefore, this Court should not interfere with the impugned order.

5. The objection to the consolidation scheme has to be raised within 30 days as per Section 19 of the said Act. In this connection, we may refer to the judgment of this Court in **Gunda Tuka Shinde since deceased by his heir Bajirao Tukaram Shinde Vs. Pandharinath Ramrao Shinde and another, 1991 Mh.L.J. 669,** where this Court has held that "under Section 19(1) of the said Act, when a scheme of consolidation is ready for publication, the Consolidation Officer shall publish a draft thereof in prescribed manner in the village concerned and objection to the draft scheme has to be raised within 30 days of the date of publication." In the present case, no objection was raised by the petitioner in respect of draft consolidation scheme after it was published, within the prescribed

period. He raised objections about final consolidation scheme after 13 years. Objections raised are therefore beyond the period of limitation.

6. Mr.Apte contended that section 19(1) has no application in this case because the petitioner's application is under Section 31A of the said Act which can be made only after a scheme is enforced under section 31 and it is found that there is a clerical or arithmetical error. Even if it is accepted that section 19 has no application, the correction of alleged clerical and arithmetical error cannot be done after 13 years in the manner in which it is done in this case. It can be done within reasonable time and not after 13 years. Moreover, we are of the opinion that the petitioner's case is not covered by section 31A of the said Act. On this aspect, we concur with the authorities below. The petition will have to be therefore dismissed.

7. We are informed that the petitioner has filed a suit being R.C.S.No. 230 of 1999 for declaration and for other consequential reliefs in respect of

the land in question. Our attention is drawn to the judgment of this Court in **Prabhakar Kushaba Hagwane and others Vs. Yashwant Bhau Hagwane since deceased by L.Rs. Ganpat Yashwant Hagwane and others, 1993 Mh.L.J. 1291,** where this Court was considering a case where the plaintiff had filed a suit on the basis that he had been illegally dispossessed from the property subsequent to his acquisition of title under the said Act. The defendants had disputed this fact. After considering Section 36A of the said Act, this Court observed that "the dispute of the nature involved in the suit would fall within the jurisdiction of the ordinary civil Court." We however, do not want to express any opinion as to whether the above judgment is attracted to this case and whether the petitioner's suit is maintainable or not.

8. In view of the above, the petition is dismissed.

9. We make it clear that all other contentions of both sides on merits of the case, are kept open.

[SMT.RANJANA DESAI, J.]

[SMT.V.K.TAHILRAMANI,J.]